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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,546	07/27/2001	John H. Schneider	769-283	8553

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EXAMINER

PICKETT, JOHN G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 04/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application

09/916,546

Applicant(s)

SCHNEIDER, JOHN H.

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 3/10/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This Office action acknowledges the applicant's amendment submitted on March 10, 2003 and presented as Paper No. 4. Claim 12 has been cancelled and claims 1-11 and 13 are pending in the application.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Specification***

3. In light of the applicant's amendment, the objection to the specification is hereby withdrawn.

***Claim Rejections - 35 USC § 112***

4. In light of the applicant's amendment, the rejection of claim 1 under 35 U.S.C. 112, second paragraph, is hereby withdrawn.

***Claim Rejections - 35 USC § 103***

5. Claims 1-6, 8-11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al (US 6,115,892) in view of May (US 5,647,671) and Van Erden (US 6,212,857).

Regarding claims 1 and 9, Malin discloses a method for producing a tamper evident plastic bag. Malin provides a zipper (Col. 2, ll. 35-38), positions said zipper on a

web of bag making film with a second flange profile atop a first flange profile (Col. 3, ll. 9-11), secures the second flange profile distal portion to the web of bag making film (Col. 3, ll. 12-14, Figure 4), and transports the web of bag making film to a form, fill, and seal (FFS) machine (Col. 3, ll. 18-20).

Malin further discloses a zipper structure with a first zipper profile (16) and second zipper profile (18) that include mating interlocking members (Figure 1). In addition, Malin discloses first flange (26) and second flange (28). Malin teaches the placement of second flange (28) atop first flange (26) and the subsequent securing to the web (34) on order to prevent the flaring of the top flange upon entry into the FFS machine. The examiner will refer to this as a ramp feature.

Malin does not disclose second flange (28) longer than first flange (26).

May discloses a zipper structure (80, Figures 5 and 6) with a second flange (88) longer than a first flange (86). May teaches that the use of one flange facilitates control of the strength of the seal by limiting the number of layers required to penetrate (Col. 8, ll. 52-58).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the zipper of Malin with the flange structure of May in order to enhance the sealing control while maintaining the ramp feature necessary to overcome the stated flange flaring problem.

The method of Malin-May meets all limitations claimed by the applicant except for positioning a slider over the interlocking members before positioning the zipper on the web.

Van Erden discloses positioning a slide on a zipper assembly before positioning the assembly on a web (Figures 1b and 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the zipper assembly of Malin-May with a slider in order to provide a convenient form of opening and closing the bag to the consumer. The examiner notes that sliders are common and conventional in the zippered bag art. It would have further been obvious to one of ordinary skill in the art at the time the invention was made to provide the slide on the zipper before transport to the FFS machine as taught by Van Erden in order to reduce the mechanical components around the FFS machine.

As to claims 2, and 10-11, Malin further discloses the sealing of first flange (26) to web (34) and the proximal portion of second flange (28) to web (34) after forming of web (34) into a tube (Col. 3, ll. 30-34). As these seals are meant to remain intact when the bag is opened, they are considered a hard seal.

As to claims 3-4, 6, and 8, May teaches the use of a peel seal with a zipper to indicate to the consumer that the bag has been opened. Also, Malin teaches the use of perforated line (32) on second flange (28) to indicate to the consumer that the bag has been opened. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply second flange (Malin, 28) to web (Malin, 34) with a peel seal as taught by May to indicate to the consumer when the bag has been opened. The examiner notes that a peel seal, a perforated line, and a scored line (said scored line and said perforated line being frangible) are functional equivalents when used as an indicator for the opening of a bag, and it would have been obvious to one of ordinary

skill in the art at the time the invention was made to use any commonly used indicator to display to the consumer that the bag has been opened.

As to claim 5, Malin discloses zipper (10) oriented in a direction transverse to the machine direction of web (34) through an FFS (Figure 3).

Regarding claim 13, bag (50) formed through the process of Malin would be a structural equivalent of the bag claimed by the applicant and is therefore anticipated by Malin.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al in view of May and Van Erden as applied to claim 6 above, and further in view of Boeckmann et al (US 5,023,122).

The method of Malin-May-Van Erden, as applied to claim 6 above, meets all limitations claimed by the applicant except for a frangible cap layer covering the perforated line.

Boeckmann discloses a bag structure with frangible cap (23) located over perforated line (21). Boeckmann teaches the use of frangible cap (23) to provide a seal over the perforated line until tearing occurs (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bag structure of Malin-May-Van Erden with the frangible cap of Boeckmann in order to prevent contamination of the bag contents during storage.

***Response to Arguments***

7. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

9. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 8:00 AM to 4:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

101  
Gregory Pickett  
Examiner  
April 22, 2003



Mickey Yu  
Supervisory Patent Examiner  
Group 3700